Remarks

Claims 1-15 are currently pending in the patent application. Claims 1-2, 4, 7, 9-12 and 15 have been amended. For the convenience of the patent examiner, Applicant will address the issues raised in the order presented in the Office Action dated July 31, 2006.

1. No response is necessary.

2. ***Oath/Declaration.*** The oath or declaration was alleged to be defective under 37 CFR 1.63 by not providing Applicant's full signature. Unfortunately, a requirement to provide Applicant's full signature is not required under 37 CFR 1.63. As is required by 37 CFR 1.63, the full name of Applicant has been provided on the oath or declaration. Applicant's full name is Mr. Edward Snow Willis, II. Furthermore, Applicant has signed the oath or declaration as he typically executes other documents. It is believed that the signature of Applicant is proper. In light of the foregoing, withdrawal of the objection to the oath or declaration is earnestly solicited.

3. ***Specification Objections.*** The specification has been objected to because of various informalities. With regard to the objection to the specification for failing to disclose element number 144, a new paragraph has been added before the first paragraph which begins on line 1, at the top of page 4 of the specification. The new paragraph contains element number 144.

With regard to the typographical error in the term, "systemis" that was used on page 5, line 9 of the specification, Applicant has amended the specification correcting this typographical error. With regard to the typographical error in the term, "18the" that was used on page 5, line 18 of the specification, Applicant has amended the specification correcting this typographical error. Additionally, traditional management and dynamic management are now explained in the new paragraph added at line 6, page 7 of the specification. In light of the foregoing, withdrawal of the objection to the specification is earnestly solicited.

4. ***Claim Objections.*** Claims 4, 7, 12 and 15 have been objected to because of various informalities. With regard to the typographical error in the term, "pervious" that was used in claims 4 and 12, Applicant has amended claims 4 and 12 correcting this typographical error. With regard to the objections to claims 7 and 15, Applicant has amended claims 7 and 15 in which the term "NV" has been replaced with "non-volatile memory items" and has thus been given a proper antecedent basis. In light of the foregoing, withdrawal of the objection to the claims is earnestly solicited.

*5.-6. **Double Patenting.*** Claims 1-11 have been provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-8 and 10-11 of U.S. Ser. No. 10/765,511. In response to the nonstatutory double patenting rejection, Applicant submits amended claim 1. Claim 1 has been amended to include a feature specifying that the updating of non-volatile memory item formed from non-volatile memory item values stored in the software load on the wireless device. This feature is supported in the original description by paragraphs 1 on 4 on page 1; the first two paragraphs of "Detailed Description of the Invention" on page 3 and the first two paragraphs on page 5. Claims 9 and 10 have been similarly amended.

Applicant submits that the changes made to claim 1 now distinguish the present application from U.S. Ser. No. 10/765,511. The distinction incorporated into claims 1, 9 and 10 distinguish the present case from the network based solution of U.S. Ser. No. 10/765,511. In light of the foregoing, withdrawal of the nonstatutory double patenting rejection to claims 1-11 is earnestly solicited.

*7.-8. **Claim Rejections – 35 USC § 112.*** Claims 7 and 15 have been rejected under 35 USC 112, first paragraph, as failing to comply with the enablement requirement. In response to this rejection, Applicant submits amended claims 7 and 15 in which the term "policies" have been replaced with the term "scheme". Applicant submits that the term "scheme" occurs on page 7 and thus is specified in the specification and the claims are now enabling. In light of the foregoing, withdrawal of the rejection to claims 7 and 15 under 35 USC 112, first paragraph is earnestly solicited.

*9.-10. **Claim Rejections – 35 USC § 101.*** Claims 1-15 are rejected under 35 USC 101 and claims 1, 9 and 10 are rejected under 35 USC 101 because the if-else statement is not complete. In response to this rejection, Applicant submits amended claims 1, 9 and 10 to add an else statement into the claims. In light of the foregoing, withdrawal of the rejection to claims 1, 9 and 10 under 35 USC 101 is earnestly solicited.

*11.-12. **Claim Rejections – 35 USC § 102.*** Claims 1, 3-10 and 12-15 are rejected under 35 USC 102(e) as being anticipated by U.S. Pat. Pub. No. 2003/0221189 ("Birum"). In response to this rejection, Applicant submits that the amended claims overcome the Birum reference.

The present application relates to dynamic management of persistent data in the non-volatile memory of a wireless device. It is often that a new software load is added to the device and that the new software loader requires persistent data stored in the non-volatile

memory be updated so it matches to the new load. However, the situation becomes more complicated as the new software load may modify the persistent data during the operation of the wireless device. For example, when the user changes device settings or enters user specific data which overrides default values initially set by the new software load.

Birum teaches a method and system of transparently teaching versions of an application on a client. This is done by updating versions of resources for the application. The term resource is defined as any data an application uses for execution, and includes a particular portion of a file. The file may be a data file, a dynamic link library and executable program, a component and the like [paragraph 19].

Purge lists are used for upgrading and/or rolling back and are treated and stored for every version available or supported.

As indicated in paragraph 37, when a claim first requests content that is version, typically the client does not already have a version of that content. One of the first things sent to the client when the client requests the content is a list of the resources associated with a version of that content.

Paragraph 38 further indicates that if a client does not have the most recent version of an application, it may request a list of resources in the most recent version together with a purge list. The client may continue to execute its current version until a switch to a new version is made. This switch may occur before all of the resources associated with the new version are supplied.

Paragraph 40 indicates that rollback occurs similarly. Specifically, the client may request a list of resources associated with previous versions together with a purge list. The client may then go through the purse list to purge any resources identified.

Further, paragraph 40 specifically indicates that:

> "*If the resource is not located locally, the client may request the resource from a content server. In this request, the client may identify the version of the resource requested.*"

The present application as now recited in claim 1 is directed to a method of dynamically managing non-volatile memory items. The management of the non-volatile memory items is done completely on the mobile station. Specifically, a software version upgrade has already occurred and non-volatile memory management is then performed to

make sure that the persistent data stored in the non-volatile memory is updated so that it matches to the new load.

According to present claim 1, a unique identifier in the non-volatile memory items indicates the current version of the non-volatile memory items within the mobile device. This is compared with a software identifier of currently loaded software to indicate whether the two match each other and if they do not match, then updating is required. Again, updating occurs from values that are stored in the software on the mobile station already. This is now recited in claim 1 explicitly.

Nothing with the Birum reference teaches the upgrading of non-volatile memory items from values that are stored already on the device itself. Applicant submits that this is therefore distinct from the Birum reference and the invention as is now claimed overcomes the Examiner's objections.

Further, Applicant submits that nothing in Birum teaches the management of non-volatile memory. Specifically, Applicant submits that the resources identified in Birum are files or file versions. This is explicitly indicated in paragraph 40 which shows that resources not located locally may be requested from a content server, distinguishing the resources of the Birum reference from non-volatile memory. In light of the foregoing, withdrawal of the rejection to claims 1, 3-10 and 12-15 under 35 USC 102(e) is earnestly solicited.

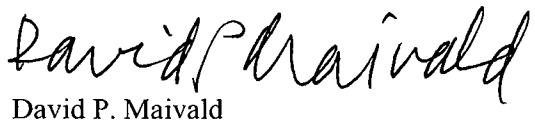
13.-15. Claim Rejections – 35 USC § 103. Claims 2 and 11 are rejected under 35 USC 103(a) as being unpatentable over Birum in view of U.S. Pat. Pub. No. 2002/0078142 ("Moore") The comments provided above with regard to the Birum reference are hereby incorporated by reference into the comments made in response to the rejection of claims 2 and 11 under 35 USC 103(a) as well. Further, nothing with the Moore reference teaches the management of non-volatile memory based on software already loaded onto the mobile device. Again, Applicant submits that this feature distinguishes the present application from the cited references. In light of the foregoing, withdrawal of the rejection to claims 2 and 11 under 35 USC 103(a) is earnestly solicited.

16.-17. Conclusion. No response is necessary.

Conclusion

It is respectfully submitted that the present application is in condition for allowance. If the patent examiner would like to suggest changes of a formal nature to place this application in better condition for allowance, a telephone call to Applicant's undersigned attorney would be appreciated.

Respectfully submitted,



David P. Maivald
Attorney for Applicant
Registration Number 42,831
Telephone: 412-566-6088
E-mail: ipmail@eckertseamans.com